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Signed: February 12, 2006


LESLIE TCHAIKOVSKY
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re No. 06-40036 TD
REDDY PORUS, Chapter 7
Debtor.

MEMORANDUM OF DECISION

Two related contested matters in the above-captioned case were presented to the Court at a hearing on February 9, 2006. The first was the Court's order to show cause why the case should not be dismissed with prejudice.¹ The second was the debtor's motion

¹The Court scheduled the order to show cause hearing for reasons other than the facts recited below. The order to show cause was issued because the debtor had provided a social security number in his first case. In his second case, he declared that he had no social security number. In response to the Court's order to show cause, the debtor stated that, in the first case, he had provided the court with a tax identification, not a social security number. The Court was not satisfied with this response. The number provided in the first case did not appear to be a tax identification number. By its format, it appeared to be a social security number. However, the Court's decision to dismiss the case with a 180 day refiling bar is unrelated to this issue.

1 to extend the automatic stay for 30 days pursuant to 11 U.S.C. §
2 362(c)(3)(B). For the reasons stated below, the Court will deny
3 the motion to extend the automatic stay and dismiss the case with
4 a refiling bar of 180 days.

5 **DISCUSSION**

6 The debtor lives in India. He has filed two chapter 7
7 bankruptcy cases in this Court within the last six months. His
8 first case was filed on October 16, 2005. It was dismissed on
9 January 10, 2006 when he failed to attend two consecutive meetings
10 of creditors. His second case was filed on January 13, 2006,
11 three days after his preceding case was dismissed.² In his
12 bankruptcy schedules, the debtor claimed to hold fee title to a
13 parcel of undeveloped real property in Danville, California (the
14 "Lot").³ He listed no unsecured creditors.

15 The Lot is encumbered by a lien securing a claim held by CMR
16 Mortgage Fund II, LLC ("Creditor"). The Creditor's claim is also
17 secured by a junior lien on a commercial building (the "Building")
18 owned by P. Bidda Holdings ("Bidda"), whose chapter 11 case is now

20 ²Section 109(g) of the Bankruptcy Code, which is not a new
21 provision, makes the debtor ineligible to file this case and
22 represents sufficient grounds to dismiss this case, apart from
23 the grounds stated below. The brief time between the dismissal
24 of the debtor's prior case and the filing of this case make it
unlikely that there were any changed circumstances justifying
the second filing. The debtor has not alleged any changed
circumstances qualifying as such.

25 ³Legal title to the Lot is actually held by the debtor as
trustee for the Double M Trust. It is unclear whether any such
trust actually exists. The debtor filed the first bankruptcy
case as an individual doing business as Double M Trust.

1 pending in this court. In support of the motion to extend the
2 automatic stay, the debtor represented that Bidda was in the
3 process of selling the Building for a sufficient amount to pay the
4 Creditor's claim in full.⁴ He admitted that he filed the two
5 chapter 7 cases solely to obtain the automatic stay so as to
6 prevent the Creditor from foreclosing on the Lot in the meantime.
7

8 The Office of the United States Trustee (the "UST") and the
9 chapter 7 trustee (the "Trustee") both appeared at the hearing
10 through counsel. The Trustee opposed dismissal of the case at
11 this time. She asked for additional time to determine whether
12 there were any creditors and whether the Lot had any value that
13 could be realized for their benefit.

14 Section 362(c)(3)(A) of the Bankruptcy Code provides that, if
15 an individual files a chapter 7 case within 1 year of when a prior
16 chapter 7 was pending, the individual only receives an automatic
17 stay for 30 days. To obtain a longer stay, the debtor must file
18 a motion to extend the stay and must persuade the Court that the
19 second case was filed in good faith. 11 U.S.C. § 362(c)(3)(B).
20 There is a presumption under these circumstances that the second
21 case was filed in bad faith. To rebut this presumption, the
22 debtor must present clear and convincing evidence. 11 U.S.C. §
23 362(c)(3)(C). Here, the debtor failed to meet that burden, and
24 the motion to extend the stay will be denied. A debtor's desire

25 ⁴The Creditor disputes that the value of the Building is
26 sufficient to pay its claim in full. To the contrary, it fears
that the combined value of the Building and the Lot may render
it undersecured.

1 to obtain the benefit of the automatic stay and nothing else is
2 not a legitimate purpose for filing a chapter 7 case.
3

4 The more interesting issue is whether the case should be
5 dismissed despite the Trustee's objection. The Trustee has
6 clearly not had adequate time to investigate whether the Lot has
7 any value for these potential creditors. On the other hand, if
8 the Creditor's view of the value of the Building and the Lot is
9 correct, any delay would be prejudicial to its interests.

10 The question arose at the hearing as to whether, under these
11 circumstances, the automatic stay protecting property of the
12 estate would expire within 30 days unless extended as well as the
13 automatic stay protecting the debtor. The Trustee had not filed
14 a motion to extend the stay. Any such extension is required to be
15 granted within the first 30 days of the case. See 11 U.S.C. §
16 362(c)(3)(B). According to the Creditor, the Lot was scheduled to
17 be sold at a foreclosure sale on February 15, 2006. If the stay
18 as to the estate expired on February 12, 2006, the Trustee's
19 ground for opposing dismissal would be moot. The Court's reading
20 of the statute in court suggested that the stay protecting the
21 estate would expire on February 12, 2006.

22 However, on closer reading of the statute, the Court concludes
23 that, even where a second chapter 7 case is filed within one year
24 of a prior case, the automatic stay protecting the estate does not
25 expire within 30 days unless extended by the court. Like many of
26 the provisions enacted in the Bankruptcy Abuse and Consumer
Protections Act ("BAPCA"), the language is ambiguous. The

1 relevant provision states that "the stay...with respect to any
2 action taken with respect to a debt or property securing such
3 debt...shall terminate with respect to the debtor on the 30th day
4 after the filing of the later case...." See 11 U.S.C. §
5 362(c)(3)(A). The phrase "with respect to a debt or property
6 securing such debt" suggests that the stay protecting the estate
7 as well as the stay protecting the debtor expires in 30 days.
8 However, the phrase "shall terminate with respect to the debtor"
9 suggests that only the stay protecting the debtor expires in 30
10 days.

11 The latter reading makes more sense. The primary motivation
12 for the enactment of the consumer provisions of BAPCA was to
13 discourage individual debtors from abusing the bankruptcy system
14 and to provide greater protections for creditors. Depriving the
15 estate of the protection of the automatic stay, where maintaining
16 it might benefit creditors, would be inconsistent with that goal.
17 Moreover, it would be difficult for a chapter 7 trustee to make
18 the showing required to overcome the presumption of bad faith.
19 Therefore, unless the case is dismissed, the foreclosure sale
20 scheduled for February 15, 2006 cannot go forward.

21 However, the Court concludes that the case should be
22 dismissed. As noted above, the debtor has scheduled no unsecured
23 creditors. Although the claims bar date has not passed, the Court
24 finds it likely that no unsecured claims will be filed. Since the
25 debtor scheduled no unsecured claims, no unsecured creditors will
26 receive notice of the filing. Moreover, because the debtor lives

1 in India, it is plausible that he has no unsecured creditors, at
2 least in the United States. If the Creditor's view of the value
3 of the two properties is correct, any delay in the foreclosure
4 sale of the Lot would be prejudicial its interests. Under these
5 circumstances, the Court concludes that it would be inequitable to
6 maintain this case on the chance that unsecured creditors might
7 file claims.

8 **CONCLUSION**

9 The debtor's motion to extend the automatic stay is denied.
10 The case is dismissed with a 180 day refiling bar. Counsel for
11 Creditor is directed to submit a proposed form of order in
12 accordance with this decision.

13 END OF DOCUMENT

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